S.B.CIVIL WRIT PETITION NO. 5312/2005.
Ashok Jumar Khurav vs. State & ors.

Date of Order: 5.7.2007.

HON'BLE MR. PRAKASH TATIA,J.

Mr. S.N. Trivedi for the petitioners
Mr. O.P. Boob, Addl. GA.

Heard learned counsel for the parties.

The petitioner was selected and appointed on the post of teacher Gr.III at Government Primary School, Bairsar under the Panchayat Samiti, Bikaner vide order dated 10.9.1992. The petitioner joined the duties on 10.9.1992. The petitioner, after completion of probation period, was confirmed as teacher Gr.III vide order dated 23.11.1994. According to the petitioner, when he joined the duties, he already passed his B.Ed. Examination and that was duly entered in the petitioner's service book. The respondent-Department published seniority list of teacher Gr.III working from 1.4.1992 to 31.3.2001 in which the petitioner's name was placed at S.No.37 and his seniority was shown as 2740. In support of this, the petitioner has placed on record the copy of the seniority list as Annx.4. In the month of May, 2005, DPC. was convened for the purpose of giving promotion to post of treacher

Gr.II from teacher Gr.III. The petitioner's candidature was not considered which subsequently came to the knowledge of the petitioner on the ground that the petitioner was not possessing the B.Ed. Degree, therefore, due to his educational qualification his candidature was not considered. The petitioner prayed for review DPC on the ground that the petitioner's candidature was wrongly not considered. According to the petitioner, the petitioner was eligible and educationally qualified for promotion and, therefore, his candidature should have been considered. The petitioner's contention is that it was the duty of the employer to prepare the case of the petitioner for consideration for promotion in accordance with law as per their own record and the petitioner could not have done anything for this.

The respondents submitted their reply and in the reply they stated that even a list of eligible candidates was published before considering the candidature of the employees for promotion which is dated 24.5.1995 (Annx.R.1). Despite this publication of list, the petitioner did not choose to raise any objection. It is submitted that in the list, petitioner's qualification has been shown as STC and, therefore, his candidature was not considered. It is also submitted that when the petitioner himself did not submit before

the employer that he already passed the examination of B.Ed., then he cannot raise grievance against the non-consideration of his candidature. It is submitted that now whenever any case of promotion will be considered then the petitioner's candidature will be considered.

I considered the submissions of the learned counsel for the parties and perused the record.

It is ex facie clear from the record of the service book of the petitioner that in the service record of the petitioner, the petitioner's education qualification has been clearly mentioned which shows that the petitioner was B.Ed. even from the time before he was appointed on the post of teacher Gr.III. Not only this but the document Annx.R/1 produced by the respondent, is only a list of the candidates who shught correction in their eligibility and it was not a list of those candidates whose cases were to be considered by the DPC. In the list of the employees at page 59, the facts stated by the respondents in their reply, have been controverted by their own document. In the list at S.No.523, the petitioner's name is mentioned with his seniority number and against this, in relevant column, the petitioner's educational qualification is mentioned as B.Ed. In view of the above reason, it

is clear that the petitioner's candidature was wrongly not considered while according promotion to other candidates junior to the petitioner.

In view of the above reasons, the writ petition of the petitioner deserves to be allowed and hence allowed. The respondents are directed to convene review DPC and consider the candidature of the petitioner and grant promotion to the petitioner if he is found suitable from the date when junior to the petitioner was given promotion.

(PRAKASH TATIA),J.

mlt.